

DRAFT

(O-2001-5)
(COR.COPY)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY CREATING A NEW
DIVISION 44 ENTITLED "HOLISTIC HEALTH
PRACTITIONERS" AND ADDING SECTIONS 33.4401,
33.4402, 33.4403, 33.4404, 33.4405, 33.4406, 33.4407, 33.4408,
33.4409, AND 33.4410 RELATING TO HOLISTIC HEALTH
PRACTITIONERS.

WHEREAS, the proposed amendments are intended to make the Municipal Code easier to read; to avoid duplicating definitions in each division; to rely on Divisions 1 through 5 for rules which apply to all businesses governed by Chapter III, Article 3 of the Municipal Code, rather than repeating the rule in each division; to avoid duplicating or conflicting with other regulations governing these businesses; and to rely on Division 1 and Chapter I, Article 1, as appropriate, including the severability clause contained in Section 11.0205; and

WHEREAS, the Council of The City of San Diego takes legislative notice of the contents of the San Diego Vice and Licensing Task Force Report (June 1996) and its accompanying oral and documentary evidence as presented before the Public Safety and Neighborhood Services Committee and the Council; and

WHEREAS, the Council of the City of San Diego finds that requiring holistic health practitioners to obtain a police permit will reduce the potential for criminal activity in the profession and enhance consumer protection; and

WHEREAS, requiring entry standards and continuing education will deter criminals from entering the profession of holistic health; and

WHEREAS, the Council does not intend to unduly restrict holistic health practitioners; and

WHEREAS, the Council desires to hold holistic health practitioner business owners accountable for the acts of their employees engaged in massage; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter III, Article 3, Division 44, of the San Diego Municipal Code be and the same is hereby amended by adding Sections 33.4401 through 33.4410, to read as follows:

DIVISION 44

Holistic Health Practitioners

SEC. 33.4401 Purpose and Intent

It is the purpose and intent of this Division to provide for the orderly regulation of the *massage* services provided by any *holistic health practitioner* in the City of San Diego, and to protect the public health and welfare of the residents of the City of San Diego, by establishing minimum requirements for entry into the profession, preventing unqualified individuals from entering the profession, and by preventing unscrupulous individuals from using the profession for goals unrelated to maintaining human health and wellness.

Nothing in this Division is intended to preclude *holistic health practitioners* from engaging in other non-medical health services, such as nutritional assistance or counseling, as long as the services are otherwise permitted under state and federal law.

Nothing in this Division is intended to limit or define the *holistic health practitioner's* scope of practice. It is intended to regulate *massage* services provided as part of the practice. Therefore, any *holistic health services* that are not listed in the definition contained in Section 33.4402, such as nutritional counseling, are not police-regulated.

SEC. 33.4402 Definitions

For purposes of this Division:

"*Holistic health practitioner*" means a non-medical health care therapist who uses any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments or other similar substances; and who claims exemption from police regulation as a *massage therapist* pursuant to this Division.

"*Holistic health practitioner business*" means any business that is owned and operated by one or more *holistic health practitioner* and that hires or contracts with other *holistic health practitioners* or *massage therapists*, or *massage trainees*, for the purpose of offering non-medical health care.

"*Massage*" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

"*Massage therapist*" means any person who gives or administers a massage to another person, for any form of consideration whatsoever.

"*NCBTMB*" means the National Certification Board for Therapeutic Massage and Bodywork.

"*NCCAOM*" means the National Certification Commission of Acupuncture and Oriental Medicine.

"*Off-premise massage therapist*" means any person who provides *massage* services by appointment at a location other than premises licensed as a *massage establishment*. It includes *massage therapists* who provide *off-premise massage* services and who are self-employed and/or who contract with or work for a business other than a *massage* establishment.

"*State-approved school*" means any school or institution within the United States, which is approved by the state in which it resides, for the teaching of *massage*.

SEC. 33.4403 Permit Required for Holistic Health Practitioner, Business

(a) It is unlawful for any person to operate as a *holistic health practitioner* without a *police permit*, unless the *holistic health practitioner* is exempt pursuant to Section 33.4407.

(b) It is unlawful for any person to own or operate a *holistic health practitioner business* without a *police permit*, unless the business is exempt under Section 33.4407.

(c) Any business or person providing *massage* services not having a *permit* under this Division must comply with Division 35 of this Article, unless the business or person is exempt under Section 33.4407 or Section 33.3513.

SEC. 33.4404 Holistic Health Practitioner Permit, Holistic Health Practitioner Business Permit Application Contents

To obtain a *holistic health practitioner permit* or business *permit*, each applicant shall furnish the following information to the *Chief of Police*:

(a) The full true na

(b) The current residential address and telephone number of the applicant.

(c) The address of the proposed *holistic health practitioner business*, or the name and address of the business at which the *holistic health practitioner* expects to be employed.

(d) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address.

(e) Written proof that the applicant is at least eighteen years of age.

(f) Applicant's height, weight, color of eyes and hair.

(g) Photographs as specified by the *Chief of Police*.

(h) Proof of successful completion of a national certification exam administered by a national professional certification organization approved by the *Chief of Police*. The exams administered by the *NCBTMB* and *NCCAOM* are approved by the *Chief of Police*.

(i) Proof of satisfactory completion of 1,000 hours of instruction in any *state-approved school* devoted to *holistic health* practices and body therapies. The applicant must provide the *Chief of Police* with proof that the school(s) attended by the applicant are *state-approved school(s)*.

(j) Proof of membership in a nationally chartered organization devoted to *holistic health* and *massage* which requires members to obtain liability insurance, or proof of comparable liability insurance.

(k) Applicant's business, occupation, and employment for five years immediately preceding the date of the application.

(l) Whether the applicant has ever had the same or similar type of license or permit issued by any agency or board, or any city, county, state, or federal agency suspended or revoked within five years immediately preceding the date of application, and the reason for the suspension or revocation.

(m) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic, and the dates and places of the *convictions*.

(n) Fingerprints.

SEC. 33.4405 Grounds for Denial of Holistic Health Practitioner Permit, Business Permit

In addition to the grounds for denial stated in Section 33.0305, an application for a *holistic health practitioner permit* or business *permit* shall be denied for any of the following reasons:

(a) The applicant has within five years immediately preceding the date of the filing of the application, *been convicted* of any of the following offenses:

(1) any offense described in California Penal Code sections 266h, 266i, 315, 316, 318, 653.22, or 647(a) or (b);

(2) any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6; or,

(b) The applicant has within five years immediately preceding the date of the filing of the application *been convicted* of: a charge of violating any lesser included or lesser related offense, including California Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in Section 33.4405(a).

(c) The applicant has *been convicted* of any offense which requires registration as a sex offender under California Penal Code section 290.

SEC. 33.4406 Renewal for Holistic Health Practitioner Permit, Business Permit

(a) Renewal of a *permit* shall be annual in accordance with Section 33.0308. At the time of annual renewal, the *permittee* must provide proof of the following:

(1) Twelve hours of continuing education in health or *massage* therapy. The continuing education hours must be obtained from a facility or organization approved by the *NCBTMB* or the *NCCAOM*, or a *state-approved school* or any other certification organization recognized by the *Chief of Police*; and

(2) membership in a nationally chartered organization, which requires members to obtain liability insurance, or comparable liability insurance. (b) This Section is

SEC. 33.4407 Exemptions

(a) This Division does not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions within the scope of their California state licenses: acupuncturists, aestheticians, barbers, chiropractors, cosmetologists, exercise physiologists, manicurists, nurses, occupational therapists, osteopaths, physical therapists, physicians, surgeons.

(b) This Division does not apply to trainers of any semiprofessional or professional athlete or athletic team, or trainers hired by a local, state or federal government agency.

(c) This Division does not apply to any educational institution licensed by the State of California, including any portion of the institution providing *massage* services, such as student clinics and work study programs, regulated under the state license. However, this exemption does not apply to any business owned or operated by such an institution that is not regulated under the state license.

**SEC. 33.4408 Permit Posting, Name Tags, and Operating Requirements for
Holistic Health Practitioners, Business**

- (a) Every *holistic health practitioner's business* tax certificate and *police permit* shall be readily available for inspection by a peace officer.
- (b) If a *holistic health practitioner* owns a business at a fixed business location, a copy of every *holistic health practitioner permit* and the *massage therapist permit* of all employees shall be posted in a conspicuous place on the business *premises*.
- (c) Each *holistic health practitioner* and *massage therapist* must wear a name tag on their outermost garment when providing *holistic health* services to a patron. The name tag must contain the *therapist's* name as it appears on the *police permit*. This subsection, subsection (c), is regulatory only.
- (d) The *holistic health practitioner business permittee* shall ensure that all *massage therapists* employed by the *permittee* comply with Division 35 of this Article.
- (e) The *holistic health practitioner business permittee* shall ensure that all *off-premise massage therapists* contracting with the *holistic health practitioner* comply with Division 35 of this Article.
- (f) It is unlawful for any *holistic health practitioner business permittee* to employ another *holistic health practitioner* or *massage therapist* unless the *employee* has a valid *police permit*.

**SEC. 33.4409 Holistic Health Practitioner, Business, Advertising
Requirements**

Each *holistic health practitioner* licensed under the provisions of this Division shall include the number of their *police permit* in any advertisement of services appearing in any newspaper, telephone directory, other printed advertising medium, or electronic media. The reference does not have to contain the words "*police permit.*" "City of San Diego permit number 1111," or similar language, will suffice so long as the correct *police permit* number is included.

This Section is effective one year from _____.

SEC. 33.4410 Operative Date - Holistic Health Practitioners - Grandfather Clause

Holistic health practitioners approved by the San Diego Police Department and operating with (1) a current business tax certificate, or (2) proof of employment as a *holistic health practitioner* within the City of San Diego, on _____ are deemed to have met the requirements of Section 33.4404, if the *holistic health practitioner* brings in proof to the *Chief of Police* of their current business tax certificate or proof of employment, and proof of compliance with Section 33.4404(j), and pays the applicable renewal fees within sixty calendar days of _____. Thereafter, the *holistic health practitioner* permitted under this Section may apply for a renewal under Section 33.4406.

Section 2. The City Clerk is instructed to insert the effective date of this ordinance, once known, in the blank spaces in Municipal Code sections 33.4406, 33.4409 and 33.4410.

Section 3. This ordinance shall take effect and be in force on July 1, 2001, after its passage.

APPROVED: CASEY GWINN, City Attorney

By _____
Mary T. Nuesa
Deputy City Attorney

MTN:cdk:pev:jp
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